

UNCLASSIFIED

H9

ACTION IO-00

RELEASED IN FULL

INFO	LOG-00	AF-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00
	WHA-00	EAP-00	EB-00	EUR-00	UTED-00	H-00	TEDE-00
	INR-00	LAB-01	L-00	NEA-00	DCP-00	NSAE-00	ISN-00
	NSCE-00	OIC-00	OIG-00	NIMA-00	PA-00	PER-00	GIWI-00
	PRS-00	P-00	ISNE-00	DOHS-00	SP-00	IRM-00	SS-00
	STR-00	TRSE-00	SA-00	FMP-00	PRM-00	DRL-00	G-00
	SAS-00	SWCI-00	/001W				

-----6F72DA 151640Z /38

R 151328Z DEC 05
FM USMISSION GENEVA
TO SECSTATE WASHDC 7984

UNCLAS GENEVA 003043

STATE FOR IO/SHA, DRL/MLA

E.O. 12958: N/A
TAGS: PHUM, UNHRC-1
SUBJECT: COMMUNICATION FROM WG ON ARBITRARY DETENTION
REGARDING OPINION ON CASE OF ABDUL JABER AL KUBAISI

1. Mission received the following communication from Ms. Leila Zerrougui, Chairperson/Rapporteur of the Working Group on Arbitrary Detention, regarding opinion 44/2005 concerning the case of Mr. Abdul Jaber Al Kubaisi. This communication has been forwarded to IO/SHA via e-mail and is included with number 8 on the Geneva 2005 Communications Log.

2. Begin text of letter:

REFERENCE: G/SO 218/2

2 December 2005

Dear Mr. Ambassador,

The Commission on Human Rights, by its resolution 2003/31 entitled "Question of arbitrary detention", decided to renew, for a three-year period, the mandate of the Working Group on Arbitrary Detention and invited the Working Group in discharging its mandate, to continue to seek and gather information from Governments and intergovernmental and nongovernmental organizations, as well as from the individuals concerned, their families or their legal representatives.

I wish to refer to the letter dated 18 March 2005 addressed

UNCLASSIFIED

UNCLASSIFIED

to you concerning a case of arbitrary detention which was reported to have occurred in your country.

In light of the above, and in keeping with the mandate entrusted to it by the Commission on Human Rights, and with its methods of work, the Working Group has examined the above-mentioned case, taking into consideration all the pertinent information at its disposal and has adopted, on 30 November 2005, its Opinion No. 44/2005 (copy attached). This Opinion will be reproduced in the report which the Working Group will present to the Commission on Human Rights at its sixty-third session.

Accept, Mr. Ambassador, the assurances of my highest consideration.

Leila Zerrougui
Chairperson-Rapporteur Working Group on Arbitrary Detention

End text of letter.

2. Begin text of opinion:

OPINION No. 44/2005 (IRAQ AND UNITED STATES OF AMERICA)
Communication addressed to the Government of Iraq and of the USA on 18 March 2005

Concerning the case of Mr. Abdul Jaber Al Kubaisi
Both States are parties to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified by resolution 1997/50 and extended by resolution 2003/31. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that only the Government of the United States of America responded, providing only general information not related to the person concerned. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has

UNCLASSIFIED

UNCLASSIFIED

been served or despite an applicable amnesty act) (Category I);

II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

III. When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind,

an arbitrary character (Category III).

4. According to the information received, Mr. Abdul Jaber Al Kubaisi, founder and director of the weekly newspaper Nida al watan (Call of the Nation) and President of the Patriotic Alliance of Iraq; resident in Al Hamriya, Baghdad. Mr. Al Kubaisi was a victim of the regime of Saddam Hussein. He was forced into exile for almost 30 years. He was first in Syria and then, since 1995, in France, where he and his family obtained refugee status. Two of his brothers were executed by Saddam Hussein's regime. However, Mr. Al Kubaisi did support neither the United Nations sanctions against Iraq nor the war in 2003. He worked closely with some of the current leaders of Iraq.

5. Mr. Al Kubaisi was arrested at his home on the night from 4 to 5 September 2004 by around 30 soldiers of a Special Forces Unit of the United States Army. They arrived in three armoured vehicles. One helicopter was surveying the operation. No arrest warrant was shown to him. The troops took Mr. Al Kubaisi to an undisclosed destination. Eight hours later, on 5 September 2004, the same Special Forces returned to search his house. They confiscated the files and archives relating to Nida al watan newspaper, broke the main door and the windows and destroyed the furniture.

6. In February 2005, Mr. Al Kubaisi's brother received unofficial reports that Mr. Al Kubaisi was being detained in Cropper camp, a United States military camp located near of Baghdad Airport. No official information was given to his family and no reasons have been provided to justify his

UNCLASSIFIED

UNCLASSIFIED

detention. Visits and correspondence have not been authorized. Mr. Al Kubaisi's lawyer has not been authorized to see him.

7. According to the source, Mr. Al Kubaisi would be held in an isolation cell under deplorable or inhuman conditions. Fears have been expressed that he may be subjected to torture.

8. It was further reported that, on several occasions, Mr. Al Kubaisi's relatives have addressed the Iraqi Ministry of the Interior; the Iraqi Army; the United States military authorities; the Embassy of the United States and the Office of the International Committee of the Red Cross in Baghdad, without results.

9. The source considers that Mr. Al Kubaisi was arrested because his articles opposing the US-lead military occupation of Iraq and calling the Iraqi people to end it. It was said that, the day before his arrest, Mr. Al Kubaisi had given an interview to the French newspaper Journal du Dimanche on the situation of two French journalists held hostage in Iraq, Christian Chesnot and Georges Malbrunot. In that interview, he stated he would do everything in his power to have the journalists freed.

10. The Government of the United States of America provided general information on Camp Cropper, a detention facility reserved for high-value security detainees. It argued that security detainees held by the Multi-National Force-Iraq under the authority of international humanitarian law and United Nations Security Council Resolution 1546 fall into the scope of international humanitarian law and therefore claimed that the Working Group on Arbitrary Detention did not have the mandate to consider this issue.

11. The Government of the United States of America offered general information about the treatment of security detainees and its cooperation on this matter with the Government of Iraq and the International Committee of the Red Cross. However, The Government of the United States of America refused to confirm or deny the presence of Mr. Al Kubaisi at Camp Cropper or under its custody. The Government of the United States invites the family to submit their request for information to the Multinational force (MNF-I).

12. Commentant la reponse du gouvernement, la source note que le Gouvernement americain ne repond pas aux questions qui lui ont ete posees concernant l'enlevement de Mr. Al Kubaisi et reaffirme que le CICR avoue son impuissance a

UNCLASSIFIED

UNCLASSIFIED

visiter Camp Cropper et a apporter des informations concretes a la famille et il en est de meme des autorites irakiennes et des avocats du Barreau irakien. La source ajoute que le Parlement europeen a adopte une resolution sur Irak dans laquelle il demande la liberation de Al Kubaisi.

13. The Working Group would like to stress as a matter of principle, that the application of International Humanitarian Law to an international or non-international armed conflict does not exclude the application of human rights law. The two bodies of law are complementary and not mutually exclusive. In the case of a conflict between the

provisions of the two legal regimes with regard to a specific situation, the *lex specialis* will have to be identified and applied. The Working Group adopted this approach in its "Legal Opinion Regarding the Deprivation of Liberty of Persons Detained in Guantanamo Bay" (E/CN.4/2003/8, para. 64)

14. As far as the mandate is concerned, the Working Group considers that, where persons are deprived of their liberty in a situation of international armed conflict but are denied the protection of the Third or Fourth Geneva Conventions, the reasons for not dealing with situations of international armed conflict underlying paragraph 14 of the Methods of Work cannot find any application (Footnote 1). Accordingly, the Working Group has already dealt with communications from detainees finding themselves in such a situation (Footnote 2).

(Footnote 1: See the Working Group's legal Opinions Regarding detention at El-Khiam prison (E/CN.4/2000/4, paras. 11-18) and the Deprivation of Liberty of Persons Detained in Guantanamo Bay (E/CN.4/2003/8 page 21).)

(Footnote 2: See Opinion No. 5/2003 (United States of America) (E/CN.4/2004/3/Add.1, page 33).)

15. In the case under consideration, Mr. Al Kubaisi was arrested at his home on the night from 4 to 5 September 2004 by soldiers of a Special Forces Unit of the United States Army and took to an undisclosed destination; at a time the United States no longer have the status of Occupying Power in Iraq under The Fourth Geneva Convention. Even if we consider the US as an occupying power in Iraq and that Mr. Kubaisi is detained as a threat for the security of the occupying power, or we consider that the US have the permission under the Security Counsel Resolution 1546 (2004)

UNCLASSIFIED

UNCLASSIFIED

to detain civilians, they are still bound by the provisions of The Fourth Geneva Convention and article 9 of the Covenant on civil and political rights to which the US and Iraq are party and have not derogated from.

16. Under article 78 of the GCIV, the administrative detention or internment of civilian in occupying territories can only proceed "for imperative reasons of security". In its Commentary on article 78 of the GCIV, the ICRC precise that: "In any case, such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved." Internment shall be made according to regular procedure in accordance with the provisions of the GCIV.

17. Article 9(4) of the ICCPR requires that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

In the absence of any comment from the Government of the United States of America on the specific case submitted to its attention and the lack of reply by the Government of Iraq, the Working Group is therefore bound to accept the allegations of the source, which alleged that Mr. Kubaisi was arrested and continue to be detained in Camp Cropper, a US military camp without any reason other than his political opinion. The Working Group thus considers that Mr. Kubaisi' prolonged detention (14 months) in undisclosed place without any access to the ICRC, family members, lawyers or other persons of the outside world violates the provisions of the GCIV and article 9 CCPR.

In the light of the foregoing, the Working Group renders the following opinion:

On the basis of the above information the Working Group concludes that the detention of Mr. Abdul Jaber Al Kubaisi is of an arbitrary character, being in contravention of Article 9 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Ahmed Ali and to bring it into conformity with the standards and principles set forth in

UNCLASSIFIED

UNCLASSIFIED

the International Covenant on Civil and Political Rights.

Adopted on 30 November 2005.

MOLEY

NNNN

UNCLASSIFIED